

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARK RICKNER and HEIDI RICKNER,

Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

C19-5857 TSZ

MINUTE ORDER

Having conducted a virtual hearing on August 31, 2022, at which Spencer D. Freeman appeared on behalf of plaintiffs Mark and Heidi Rickner, and Rory W. Leid, III appeared on behalf of defendant Allstate Insurance Company, the Court, the Honorable Thomas S. Zilly, United States District Judge, presiding, enters the following Minute Order.

(1) The previously deferred portions of Plaintiffs' motions in limine, docket no. 97, are GRANTED in part, DENIED in part, and DEFERRED as follows:

II. Plaintiffs' motion to exclude photographs of personal property or references to personal property is GRANTED in part and the Court excludes any photographs containing Nazi, Neo-Nazi, and/or Confederate flags. This includes photographs 24-IMG_0858, docket no. 112-4 at 2, 30-IMG_0864, docket no. 112-4 at 3, 149-IMG_0552, docket no. 112-4 at 4, 26-IMG_0860, docket no. 112-3 at 3, photograph 17, docket no. 112-5 at 18, and 79-IMG_0915, docket no. 112-5 at 90. Defendant may select no more than fifty (50) photographs total from Exhibits 205, 206, and 207 to offer at trial. The Court DEFERS to the Pretrial Conference whether it will exclude the Contents List, marked as Exhibit 203, docket no. 112-1.

1 IV. The deferred portion of Plaintiffs' motion to exclude police reports
2 and contents of police reports is GRANTED in part. "It is well established that
3 entries in a police report which result from the officer's own observations and
4 knowledge may be admitted but that statements made by third persons under no
5 business duty to report may not." United States v. Pazsint, 703 F.2d 420, 424-25
6 (9th Cir. 1983). To the extent these reports are admitted, they must be redacted to
7 the extent required by Federal Rules of Evidence 403 and 802, and Defendant will
8 need to lay the appropriate foundation for the reports at trial. The parties should
9 meet and confer before the Pretrial Conference to attempt to agree on appropriate
10 redactions.

11 VI. Plaintiffs' motion to exclude witnesses and documents not timely
12 disclosed is GRANTED in part. The Court EXCLUDES the following witnesses
13 for failure to timely disclose: (i) Scott Roberts, (ii) Julie Rickner, and
14 (iii) Sarahann Rickner. The motion is DENIED as to Matthew Rickner and
15 ProTech Mobile Services.

16 VII. Plaintiffs' motion to exclude any reference to arson, allegation of
17 arson, or question the relevance of which is an allegation of arson is DEFERRED
18 to trial. Defendant previously clarified that it is not relying on the intentional act
19 (arson) exclusion to deny coverage or as defense to any claim; rather, Defendant
20 intends to assert as a defense to Plaintiffs' bad faith claim that Plaintiffs concealed
21 information, including Mark Rickner being an arson suspect. See Minutes (docket
22 no. 136). Accordingly, Defendant will be permitted to refer to arson only as it
23 relates to Defendant's defense to Plaintiffs' bad faith claim, and the Court will
give a limiting instruction.

(2) The previously deferred portions of Defendant's motions in limine, docket
no. 99, are GRANTED and DEFERRED, as follows:

8. Defendant's motion to exclude any reference to the nature and size
of Allstate Insurance Company is further DEFERRED to trial.

9. Defendant's motion to limit Plaintiffs' actual damages to the
allegedly increased cost to rebuild is GRANTED.

(3) Having reviewed the parties' supplemental trial briefs, docket nos. 123 and
124, the Court concludes that Plaintiffs may seek treble damages under Washington's
Insurance Fair Conduct Act ("IFCA"). Defendant contends that the complaint, docket
no. 1-1, does not plead an IFCA violation with any specificity. Defendant, however, has
had notice of the IFCA claim since Plaintiffs initiated this action in Pierce County
Superior Court. In its notice of removal, docket no. 1, Defendant relied on Plaintiffs'
claim for treble damages under IFCA to support that this action satisfied the amount-in-
controversy requirement for diversity purposes. The question of whether to award

1 enhanced damages and, if so, how much to award will be decided by the jury. See MKB
2 Constructors v. Am. Zurich Ins. Co., 711 F. App'x 834, 838 (9th Cir. 2017).

3 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of
4 record.

5 Dated this 1st day of September, 2022.

6 Ravi Subramanian
7 Clerk

8 s/Gail Glass
9 Deputy Clerk